IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4506 of 1996

AMAR SINGH
V/S
B.O.R. & ORS

Mr. BL CHOUDHARY for Mr. JR BENIWAL, for the appellant / petitioner

Mr. NS ACHARYA, for the respondent

Date of Order : 20th December, 2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this writ petition, seeks to challenge the judgment of the learned Board of Revenue Annexure-11 dt. 22.10.1996, and that of the learned trial court, the Assistant Collector, Nohar dt. 9.9.87 Annexure-9, and also seeks restoration of the judgment of the Revenue Appellate Authority dt. 2.4.1992, Annexure-10. Consequential prayer for decree for possession of the land in question is also sought, including mesne profits.

On the face of it, the case looks very typical, inasmuch as the plaintiff petitioner filed a suit for declaration, and possession against the present respondents

no. 4 and 5, hereafter referred to as the respondents, alleging interalia, that the defendant no.2 Chawali had adopted the plaintiff, in accordance with the instructions of her deceased husband Mani Ram, according to local customs, and a regular adoption deed was also executed, and got registered in April, 1947. Since then the plaintiff is living as adopted son of Mani Ram, and is continuing to be owner, and in possession of moveable, and immoveable property. With this it was pleaded, that the deceased had 78 Bighas and 9 biswas of land in Rohi in village Ramgadiya, which came in the ownership of the plaintiff. It is pleaded, that after adoption, the defendant Chawali contacted Kareva (A form of Second Marriage/Nata) with Kashi Ram, and started living with him as his wife. It was then pleaded, that with respect to this land, a suit was also filed by Chawali, against one Malla, in the Court of Munsif Bhadra on 5.2.48, which was dismissed, on the ground, that Chawali is not entitled to maintain the suit, as the owner and Khatedar of the land is present plaintiff Amar Singh. Then, appeal was filed, wherein by amendment of the plaint, the present plaintiff also was allowed to join as co-plaintiff, and then that suit was decreed. Thus, he claims ownership in the property. With this, it is then alleged, that this land went into Colonisation, and came to be described as Chak No.3, Jogiwala, and was assigned new Murabba numbers, and the land continued in the revenue records in the name of defendant Chawali, and therefore,

the plaintiff is entitled to have the entry corrected, and to have it recorded in his name. Then, it was pleaded that for the last some time the defendant Chawali is not happy with the plaintiff, and is under influence of the new husband Kashi Ram, and is also out and out to damage the plaintiff. Consequently, taking advantage of the revenue entries to be in her name, she sold 33 bighas of land, vide registered sale deed dt. 16.4.72 to defendant no.1 Kashi Ram, which sale is void ab-initio, and ineffective against the plaintiff, and is required to be declared null and void, and since the defendant no.1 has illegally taken possession of the land forcibly in the year 1977, the plaintiff is entitled to possession thereof.

The defendants filed a joint written statement contesting the suit, claiming that the plaintiff is not the heir of Mani Ram, rather Mani Ram's heir is Chawali, the adoption was denied. It was denied that Mani Ram ever gave instruction to adopt the plaintiff. The performance of any adoption ceremony was also denied. It was also pleaded that the plaintiff is real brother of Mani Ram, and is thus Devar of the defendant Chawali, therefore, he could not be taken in adoption, and thus the adoption is ab-initio, null and void, giving no rights to the plaintiff. It was also pleaded, that the alleged adoption was never actually acted upon, the plaintiff never received any properties through Mani Ram, nor did he ever live with defendant Chawali, as

her son, nor did he cultivated the lands, nor is he member of the family of the defendant Chawali. Then, Chawali's contacting Kareva with Kashi Ram in Samvat Year 2005, corresponding to year 1948, and since then her living with him was denied, revenue records were pleaded to be correct, and the selling of land by Chawali to defendant Kashi Ram was admitted, and was pleaded to be valid. It was pleaded that Chawali is continuing to be Khatedar tenant of the land since 2003-04, and the plaintiff never took any steps for removing her name in the revenue records, rent was being paid by Chawali. Thus, by principle of estoppel, and acquiescence by conduct, the plaintiff is disentitled to maintain the suit. It was reiterated, that the plaintiff has no right, title or interest in any part of the land. It was also pleaded, that the defendant no. 2 Chawali is in continuous peaceful possession as Khatedar for the last more than 25 years, and thus she acquired title by adverse possession, and thus, the defendants have perfected their title by adverse possession. The suit was claimed to be time barred. It was also pleaded that since the plaintiff had not claimed any declaration of his Khatedari, he is not entitled to maintain the suit. Interalia with these pleadings it was prayed, that the suit be dismissed. A rejoinder was also filed by the plaintiff, reiterating the plaint's averments.

It may be observed here, that the parties have

not produced the pleadings before this Court, and therefore, the facts narrated above have been gathered by me, only from the recitals contained in the judgment of the learned trial Court, being Annexure-9.

The learned trial court framed some nine issues; issue no.1 was about the plaintiff being adopted son, and having become owner of the property, issue no. 2 was as to whether he is entitled to have the sale deed dt. 16.4.72 declared null, and void, then issue no. 3 was about plaintiff's entitlement to get decree for possession, issue no. 4 was as to whether the adoption is unauthorised, and the document is illegal, then issue no. 5 was about the suit being not cognizable by revenue court, and the plaint being leviable with court fees on the valuation of the suit land, then issue no. 5A was as to whether the defendants have perfected title by adverse possession, then issue no. 5B was about the plaintiff being not entitled to maintain the suit by estoppel, and acquiescence, issue no. 5C was about suit being barred by time, and issue no. 6 was about relief.

Before proceeding further with the findings recorded by the learned courts below, since the case has a typical and chequered history, at this place I think it appropriate to narrate some more facts, and sequence of events, which have emerged from the other documents, which

have been produced before this Court, by the petitioner.

As noticed above, during narration of facts, that a suit had been filed by Chawali against one Malla Ram, for recovery of possession of entire land measuring 78 Bighas 9 biswas, interalia on the ground, that the defendant therein was inducted for cultivation on share basis. He has declined to pay the share, and therefore, suit for possession was filed, and ultimately that suit was decreed. Of course, it is noticed by the learned trial court in Annexure-9, that it was dismissed by the learned trial court, on the ground of locus-standi of Chawali, and then appeal was filed, wherein Amar Singh was joined as party, and then that suit was decreed. However, no material in that regard has been made available in this writ petition, but then, that is not a fact which is in dispute.

Then, the present plaintiff had also filed another suit in the year 1980 itself, against the present defendant no.2 Chawali, and Mst. Sharbati. It may be observed here, that it has come, that Sharbati happened to be the daughter of Chawali, from the loins of her deceased husband, Mani Ram. In that suit identical averments about adoption, filation of other suit against Malla Ram etc. were made, and it was pleaded, that on 16.4.72 Chawali has sold 33 bighas of land in favour of Kashi Ram, and since Chawali intended to sale further land, the plaintiff had filed a

suit against Chawali, and therein interim stay was granted, and notwithstanding that stay, on 27.2.1980, she executed sale deed in favour of Sharbati, and got it registered on 10.3.1980, therefore, the earlier suit was withdrawn with liberty to file fresh suit. With this it was pleaded, that the sale in favour of Sharbati is null and void. In that suit also a joint written statement was filed, pleading interalia, that Chawali has wrongly been shown wife of Kashi Ram, while she continues to be widow of Mani Ram, adopted son of deceased Jethu, and Sharbati is daughter of Mani Ram and Chawali. Factum of adoption was denied. Practically identical pleadings, as taken in the present suit, were taken in that suit, as well. That suit was decided by the learned trial court on 5.3.1983, and it was found, that the adoption is a registered document, in the earlier suit against Malla Ram, Chawali had herself filed an application alleging Amar Singh to be her adopted son, and thus on principles of estoppel and res-judicata, she cannot be allowed to go back from her stand. Thus, the adoption was found proved. Regarding jurisdiction of the Revenue Courts, it was found, that she stood divested of the right in the property, and retained no rights in the property, therefore, the sale deed executed by her is ab-initio, null and void. Interalia with these findings the suit was decreed, which judgment is Annexure-4. Against this judgment Sharbati and Chawali filed appeal, and the learned Revenue Appellate Authority, vide judgment

Annexure-5 dt. 15.3.84, found, that the adoption is registered document, and being more than 30 years old a presumption attaches, and then admissions of Chawali, as noticed by the learned trial court, were also taken into account, and considering the provisions of Hindu Law also, it was found, that the adoption is proved. Then, the question of Chawali contacting Kareva with Kashi Ram was considered, and it was found in para-7, that from the material on record it is established, that after death of Mani Ram, who died in 1946, she adopted Amar Singh in 1947, and somewhere before 1952, she contacted Kareva with Kashi Ram. Then it was also considered, that it has also come on record, that Chawali has some 4-5 issues from Kashi Ram, eldest being of 40 years of age. Thus, it was also considered that Kashi Ram and Chawali are living as married husband and wife. Then, the provisions of Bikaner Tenancy Act, specially Section 22, were considered, which deal with the rights of the widows, and subsistence of those rights, and it was found, that she could enjoy the property as wife/widow of Mani Ram, and when she did not remain his widow, she stood divested of the right. It was also found, that Hindu Women's Right to Property Act is not applicable to the land in question. Thus, the judgment of the learned trial court was upheld. Then, against this judgment Chawali and Sharbati filed second appeal before the Board of Revenue, which was decided on 16.11.1992, and the learned Board of Revenue noticed, that the counsel for Amar Singh

drew attention of the learned Board of Revenue, towards the judgment of District Court Nohar, passed in Civil Suit No. 31/84, decided on 15.4.1988, by producing certified copy, wherein Amar Singh was declared to be sole heir of Mani Ram. The learned Board of Revenue expressed its concurrence with the said judgment, and found, that no interference is required to be made in the judgments of two learned courts below. Further, a contention was noticed, to the effect, that even if Amar Singh is taken to be heir of Mani Ram, he would have half share of the property, and it was observed, that since this question was not raised before the learned courts below, this cannot be allowed to be raised in second appeal, in the original plaint also no such controversy was raised, and it was clarified, that the parties will be free to initiate appropriate litigation for declaring their rights. This is judgment Annexure-6.

In the meantime, as noticed by the learned Board of Revenue, there happened to be yet another litigation, being Civil Suit No. 31/84, in the court of Additional District Judge, Nohar. This was a suit filed by Sharbati, against Amar Singh, for declaration, to the effect, that adoption deed dt. 9.4.47 is of no consequence whatever on the rights of Sharbati, and is void and ineffective qua her. In this suit it was pleaded, that Mani Ram expired in Bhadva Samvat Year 2003, and that Chawali had sold 33 bighas of land to Kashi Ram, and 25 bighas of land to

Sharbati, and the remaining 8 bighas of land continues with Chawali, and that, according to the pedigree table, she would be the only heir of Smt. Chawali after her death. Then, reference was made to the above referred suit no. 95/80, filed by Amar Singh against Chawali and Sharbati, and that having been decreed on 5.3.83, wherefrom she learnt about the adoption deed, and therefore, the suit was filed, denying adoption, performance of any of the adoption ceremonies, Chawali being in continuous possession for the last 37 years, Amar Singh being living with his father Khyali Ram, Chawali being young and Parda Nasheen lady, whose husband had died, the plaintiff being only one year's nascent, and since nobody was there to look after the property, except Mani Ram's real father Khyali Ram, Amar Singh being the youngest son of Khyali Ram, Chawali being under trauma of widowhood, it appears that the adoption deed was got executed by Khyali Ram, taking advantage of the situation, but then, that is of no adverse consequence against Chawali. It was also pleaded, that Amar Singh being natural real brother of Mani Ram, the husband of Chawali, he could not be taken in adoption, since Mani Ram was young, he did not leave the hope of procreating male child, therefore, his giving instruction to adopt, is clearly not reliable. This suit was contested by Amar Singh, supporting the factum of adoption, it was pleaded that the suits being Amar Singh Vs. Sharbati, and Amar Singh Vs. Kashi Ram, are already pending, wherein suit against Sharbati had already

been decreed on 5.3.83, and the appeal against that judgment has also been dismissed, and the matter is pending before the learned Board of Revenue. Then, regarding 8 bighas of land, it was pleaded, that the suit in the Revenue Court (S.D.M.), with the title of Amar Singh Vs. Chawali is already pending, and that, in the suit number 95/80, plea was taken about the adoption being void, but then, the suit has been decreed on 5.3.83. It was also pleaded, that Chawali has taken him in adoption, in accordance with her husband's instruction, and the adoption deed was registered on 9.4.47, all ceremonies of adoption were performed, and since then he was living with Chawali. However, few years after adoption, Chawali contacted Kareva with Kashi Ram, and started living with him, and with this, it was pleaded, that Amar Singh is the heir of the properties of Mani Ram, and that Chawali was not mentally weak, nor was under pressure of Khyali Ram, but she has voluntarily taken him in adoption. It was pleaded, that the plaintiff is not the heir of Chawali, from any stand point, as Mani Ram has died before the commencement of Rajasthan Tenancy Act, and therefore, the provisions of Bikaner Tenancy Act applies, and according to Bikaner Tenancy Act, and Hindu Law, Amar Singh had became the sole owner of the property of Mani Ram, from the date of Mani Ram's death, Chawli did not get any right in the property, as she has contacted Kareva before 1956, and therefore, Sharbati also did not get any right in the property. A plea of res-

judicata was also taken, in view of the judgment rendered in the litigation commenced vide suit no. 95/80. Learned Addl. District Judge vide judgment Annexure-8, held, that it is established, that Amar Singh was taken in adoption, and according to law, he would be treated to be a member of co-parcenery, and is to be treated to be heir of Mani Ram, and Chawali could not be the heir of Mani Ram, since before 1956, and since Amar Singh was taken in adoption, he became owner of the house, and of the agricultural land, by inheritance. It was also found, that the revenues entries are of no consequence, apart from the fact, that litigation is going on in that regard. It was also found, that even if Chawali is found to be in actual physical possession, it is to be treated to be possession through Amar Singh, and since by adoption the property devolved on Amar Singh, the properties does not vest in Chawali, even in accordance with Section 40 of the Hindu Adoption Act. Thus, this regular civil suit of Sharbati was dismissed.

With this factual background of earlier chequered litigation, now I revert to the judgment of the learned trial court in the present litigation, which is dated 9.3.1987, i.e. prior to the judgment of Civil Court, Annexure-8, so also prior to the judgment of the learned Board of Revenue, Annexure-6, in the litigation relating to land alienated by Chawali to Sharbati. The learned trial court, deciding issue no. 1 held, that the matter had

already been subject matter of litigation in the suit against Sharbati, and therefore, it was found, that Amar Singh is the adopted son of Mani Ram, and is the owner of the property. Then, deciding issue no. 2, again relying on the said judgment, it was found, that the finding is binding, and the issue was decided in favour of the plaintiff. Then, deciding issue no. 3, it was found, that since the plaintiff is only Khatedar of the land, though he had never been in possession, rather since the date of death of Mani Ram, upto 16.4.72, it was in possession of Chawali, and thereafter, it is in possession of Kashi Ram, and since in view of Section 22 of the Bikaner Tenancy Act, she did not retain any title in the property, the plaintiff was entitled to dispossess the defendants. However since he attained the age of 18 years in the year 1958, he could have filed the suit for possession, within three years therefrom, against Chawali, but no suit having been filed till 1980, with expiry period of 12 years, the suit became barred by time, and therefore, the plaintiff was not held entitled to possession of the property. Issue no. 4 was decided in favour of the plaintiff, as the adoption deed has been found valid. Then, issue no. 5 was decided in favour of the plaintiff, finding the suit to be cognizable by revenue court. Then, regarding issue no. 5A, since the suit was found to be barred by time, issue was decided in favour of the defendant. Then, issue no. 5B was also thus decided against the plaintiff. In the result, it was held,

that the plaintiff is adopted son of Mani Ram, and is entitled to properties of Mani Ram, but since, the possession of the defendants is continuing, who have perfected the title by adverse possession, the plaintiff is not entitled to decree for possession. Thus, the suit was dismissed. Aggrieved of this, the plaintiff petitioner filed an appeal before the learned Revenue Appellate Authority. The learned Revenue Appellate Authority; deciding issue no.1 found, that in view of the earlier judgment, in the litigation arising from suit no. 95/80, the matter stands concluded, that the plaintiff is the adopted son of Mani Ram. Then, deciding issue no. 2 also it was found, that in view of the previous judgments, it is established, that the present sale deed is also void, and does not adversely affect the rights of the plaintiff. Likewise, deciding issue no. 3 also, it was found, that it is clear, that Chawali was out and out to damage Amar Singh, and the revenue entries are of no consequence, and the finding on issue no. 3 was maintained. Likewise, finding on issue no. 4 and 5 was also maintained. Then, deciding issue no. 5A, it was found, that the defendant had not pleaded a word in the written statement, about their adverse possession, and since the plaintiff is adopted son, till execution of the sale deed dt. 16.4.72, possession was of defendant Chawali, and then of Kashi Ram, and therefore, there is no question of adverse possession, and thus this issue was decided against the defendant, and in favour of

the plaintiff. Then, issue no. 5B was also decided in favour of the plaintiff. Thus, the suit was found to be within time. Consequently the judgment of the learned trial court was set aside, and the suit was decreed, vide judgment Annexure-10, dt. 2.4.1992.

Aggrieved of this judgment and decree; the present defendant respondents Chawali and Kashi Ram filed second appeal before the learned Board of Revenue, which has been decided vide impugned judgment Annexure-11 dt. 22.10.1996. It is noticed in para-3, that it was contended before the learned Revenue Board, that the decree of the Revenue Appellate Authority is based on previous judgment Annexure-5, wherein Amar Singh has been found to be adopted son, and having become owner of the entire property, while half property has been sold by Chawali to Kashi Ram. It was contended, that according to the plaintiff adoption is of 9.4.47, while Mani Ram has expired earlier, and therefore, since Chawali had earlier become Khatedar, she became the sole heir, and consequently, even after adoption, Amar Singh would be, at best, Khatedar of half portion of land, and thus, Chawali could sale half portion to Kashi Ram, thus the suit could not be decreed, treating Chawali and Kashi Ram to be trespasser. Other contention was, that after 1956, Chawali also became Khatedar of half portion of the land, while the sale deed is of 1972, and Jamabandi continued in the name of Chawali, since 1947, and Amar

Singh never asserted for his name being entered, thus Chawali was fully entitled to sell half portion of land to Kashi Ram. On the other hand, the present petitioner, who was respondent before the learned Board of Revenue, reiterated all the facts, and supported the decree of the Revenue Appellate Authority. The learned Board of Revenue found, that even if the facts alleged by the petitioner are accepted to be correct, still, if Amar Singh is taken in adoption after 1947, under law he would get half portion in the property, and in any event, half share will continue with Chawali, as Amar Singh was not taken in adoption in the life time of Mani Ram, who had died before 1947. Consequently Chawali alone became Khatedar, and in such circumstances, even after adoption, Amar Singh will get half portion in the property, and remaining half will remain with Chawali, and if she has bonafidly sold the land to Kashi Ram, he would become Khatedar thereof, and Amar Singh cannot maintain the suit against him, alleging him to be trespasser. The contention of the plaintiff, about the adopted son becoming owner of the property, after adoption, was negatived, on the ground, that Amar Singh was not taken in adoption during life time of Mani Ram. It was also held, that even if Chawali had right of maintenance, during the period 1947 to 1956, still by virtue of Section 14 of the Hindu Adoption Act, she became full Khatedar of this half portion of the land, and was entitled to sell it. It was also found, that since Chawali is alive, and in view of she

being the plaintiff's mother, is very much entitled to live in the said property. In such circumstances, she could not be sued as trespasser, and therefore, the suit is liable to be dismissed. It was also held, that in the earlier suit against Malla Ram, Chawali alone was not found competent to file the suit, and in appeal, the plaintiff Amar Singh was added as co-plaintiff, and even thereafter, the suit was not decreed in favour of Amar Singh alone, but was decreed in favour Chawali and Amar Singh, both. Thus it clearly negatives the story, about Chawali not having half share of the property, as otherwise the suit could have been decreed, only in favour of Amar Singh, by striking out the name of Chawali. Thus, the appeal was allowed, holding, that the Revenue Appellate Authority was in error in decreeing the suit, treating Chawali and Kashi Ram to be trespasser, and the judgment of the learned trial court was restored.

Assailing this judgment Annexure-9 and 11, it is contended by the learned counsel for the petitioner, that in view of the judgments of this Court, in Bhajandas Vs. Nanuram reported in 1954 RLW-145, Sarjeet Singh Vs. Kripal Singh, reported in 1955 RLW-124, Om Prakash Vs. Tarachand, reported in 1977 WLN (UC)-42, in the present case adoption is clearly proved, as even the husband's brother could be taken in adoption, no ceremonies were required, regarding adoption, in Bikaner, and that, the evidence, as led,

clearly establishes the factum of adoption. Then, it was contended that in the earlier suit, filed by Amar Singh, against Sharbati, which was decided by the learned Board of Revenue against Sharbati, vide judgment dt. 16.11.92, it was clearly held, that the entire property vested in Amar Singh, consequent upon adoption, and the suit filed by him against Sharbati and Chawali was decreed. Admittedly that judgment has not been assailed any further, and has acquired finality, with the result, that the finding of the competent revenue court, inter parties, with respect to existence, of right title or interest of Chawali, qua petitioner Amar Singh, acquired finality, and since it was found, that Chawali did not retain any right, title or interest in the entire property, obviously, it was not open to the learned Board of Revenue, in the present suit, to hold, that Chawali remained entitled to half share of the property, more so, in view of the fact, that this has never been the case of the defendants, at any time during entire litigation. It was then submitted, that adoption relates back to the date of death of Mani Ram, and has the effect of divesting Chawali of the inheritance, consequent upon death of Mani Ram, as in the meantime, no other rights had been accrued in any third person, as are protectable, under the Hindu Law, and/or according to various judgments. Learned counsel relied upon Section 22 of the Bikaner Tenancy Act, to contend, that according to explanation (1), an adopted son, adopted under customary or personal law,

will be treated as “male lineal descendant” for the purpose of sub-section (1), provided that adoption is based on registered deed, under Bikaner Registration Act, and has been proved as valid. According to sub-section 1(a) when a tenant having right, dies, the right shall devolve on his male lineal descendant, if any, in the male line of descendant, and that, according to clause (b), in the event of failure of such descendant, the property devolves on his widow, if any, until she dies, or remarries, or abandons the land, or is, under the provisions of this Act, ejected therefrom. Then, the learned counsel also relied upon Section 94 of the Bikaner Tenancy Act, which also provides, that when a tenant, having a right of occupancy in any land dies, the right shall devolve, firstly on his male lineal descendants, if any, in the male line of descendant, and failing such descendants, on his widow, if any, until she dies, or remarries, or abandons the land, or is, under the provisions of this Act, ejected therefrom. Likewise sub-section (3) thereof further provides, that when the widow of a deceased tenant succeeds to a right of occupancy, she shall not transfer the right, by sale, gift or mortgage, or by sub-lease, for a term, exceeding one year. Learned counsel also relied upon the text of Section 207 and 208 of Hindu Law by Mayne, for relying upon the theory of relate back, consequent upon adoption, except certain mediatory transaction. Then, learned counsel relied upon a judgment of Privy Council, in Anant Bhikkappa Patil Vs. Shankar

Ramchandra, reported in 1943 Privy Council-196. It was also contended, that the present suit was not a suit for declaration for Khatedari rights, but was a suit for possession, and for declaration about sale being void, ab-initio, and for which, even no declaration was required. It was also contended, that the learned Board of Revenue has not decided the matter issue-wise, apart from the fact, that the Revenue Appellate Authority decided all those issues, which were findings of fact, and could not be interfered by the learned Board of Revenue. Then, relying upon the judgment of this court, in Bibi Vs. Board of Revenue, reported in 2002(3) DNJ (Raj.)-851, it was contended, that Hindu Women Right to Property Act was not applicable, in erstwhile State of Bikaner. Then, the judgment, in Gulab Vs. Board of Revenue, reported in 2006 (2) WLC(Raj.)-463, was relied upon, for the purpose of highlighting the effect of remarriage by the widow, wherein it was held, that widow, after remarriage, has no right to land belonging to her former husband. Reliance was also placed on the judgment of this Court, in Krishanlal Vs. Rajaram, reported in 1997 DNJ(Raj)-677. Reliance was placed on Sawan Ram Vs. Mst. Kalawanti, reported in 1967 AIR-1761, and Dalchand Vs. Kamalabai, reported in 2000(2) Civil L.J.-605.

On the other hand, learned counsel for the defendant respondent placed reliance on a judgment of this

Court, (my judgment) dt. 31.1.2007, in S.B. Civil Writ Petition No. 2578/93, Laxmi Chand Vs. Board of Revenue, and contended, that the facts of the two cases are identical, and in Laxmi Chand's case also, the suit has been dismissed by the Court, and for the same reasonings, the present suit is also liable to be dismissed. Then, it was contended that the present suit is wholly misconceived, inasmuch as relief of declaration about sale deed being null and void could not be claimed in the revenue Court, and suit is not maintainable against the recorded tenant under section 183 of the Rajasthan Tenancy Act. Then, it was contended that at the time of adoption, Amar Singh was 9 years of age, and did became major in 1956, and could file the suit within three years therefrom, while the present suit has been filed in the year 1980. The same is, therefore, clearly barred by time. It was also contended, that the theory of plaintiff's dispossession in 1977 has been disbelieved by the learned courts below, and even the plaintiff never claimed any declaration of his own Khatedari rights, and therefore, considered from any stand point, the suit could not be maintained, more so when admittedly Chawali was in possession.

In rejoinder the learned counsel for the petitioner relied upon the finding recorded by the learned Assistant Collector, in Suit No. 95/80, in the judgment dt. 5.3.83 (Annexure-4) on issue no. 4, wherein it was found,

that Chawali has not even been able to show, as to, to what extent of land is Nahari, and to what extent is Barani, and his witnesses are not able to depose, as to who is cultivating the land. Thus, it was found that there is apprehension of interference with the plaintiff's possession.

I have considered the rival submissions, and have gone through the various judgments, so also material available on record.

To start with, I may refer to the judgment of Hon'ble the Supreme Court, in Sadhu Singh Vs. Gurdwara Sahib Narike, reported in (2006)8 SCC-75, relied upon by the learned counsel for the petitioner, wherein expounding the parameters of rights flowing from Section 14 of the Hindu Succession Act, it was held by Hon'ble the Supreme Court, after discussing various case law in para-11 and 12, that enlargement of right under Section 14(1), could only be, on the basis, that a widow had some pre-existing right in the property. In case where she did not have any pre-existing right, she would not be entitled to rely upon Section 14 of the Act, to claim an absolute estate, on the property bequeathed to her, and her rights were controlled by terms of the Will, and Section 14(2). Thus, the pre-dominant question, which is germane to the controversy was, and is, as to what was the right of the respondent Chawali,

at the time of her executing the sale deed in 1972.

In Anant Bhikkappa's case, it is way back in 1943, that Privy Council had clearly ruled, that power of Hindu widow to adopt, does not come to an end on the death of sole surviving coparcener. Neither it depends upon vesting, or divesting, nor can the right of adoption, be defeated by partition between the coparcener. Then, in Sawan Ram's case Hon'ble the Supreme Court has clearly ruled the consequence of adoption, holding, that adoptee is to be deemed to be a member of the family of the deceased husband of the widow, and he loses all his rights in the family of his birth, and those rights are replaced by the rights, created by the adoption, to the adoptive family. Then, the question of factum of adoption need not detain me, in view of Sarjeet Singh and Om Prakash's cases. More so on the face of the litigation culminating into Annexure-6, and judgment 8, this question cannot be said to be any more open to be agitated by the parties, in this litigation, over again. Then, in Gulab's case, dealing with the provisions of Section 2 of the Hindu Succession Act, it has clearly been ruled, that a widow, after remarriage, has no right to the land, belonging to her former husband, and in Bibi's case it has been ruled, that Hindu Women Right to Property Act was not applicable in erstwhile State of Bikaner. Thus, this being not a disputed position, that Mani Ram died in the year 1945, thereafter Amar Singh was adopted in the

year 1947, and she having remarried prior to commencement of the Hindu Succession Act, in view of the provisions of Section 22 and 94 of the Bikaner Tenancy Act, Chawali did not retain any right, title or interest, in the property of Mani Ram, with her adopting Amar Singh, and in any case, with her contacting remarriage with Kashi Ram. This conclusion of mine is also required to be drawn, apart from the other legal position, in view of, it flowing from the judgments Annexure-6 and 8, which are judgments between Chawali and Amar Singh, apart from other parties.

That being the position, when Chawali did not have right, title or interest in the property, and on that ground, when the sale made by her in favour of Sharbati, was ignored, and decree for possession was passed against her, ultimately upto the Board of Revenue vide Annexure-6, which has acquired finality, on the same ground, the only conclusion is, that Chawali had no right to execute any sale deed in favour of Kashi Ram, either. Consequently even if she had executed any sale deed; that could possibly not adversely affect rights of Amar Singh, the petitioner. Amar Singh could, straight way ignore that document, even without seeking any declaration in that regard. Therefore, in my view, it cannot be said, that simply because it is pleaded, that the sale deed be declared to be ineffective qua the rights of the plaintiff, it cannot be said, that the suit is misconceived, or was not cognizable by the

revenue court.

Then, the most crucial question survives, as to whether the suit could be maintained under Section 183 of the Rajasthan Tenancy Act, against Chawali, who is recorded Khatedar, and/or against Kashi Ram, who was a transferee from recorded Khatedar, and as to whether, the suit filed in the year 1980, is within time.

So far as the first part of the question is concerned, it is established law, that revenue entries are only for fiscal purposes, and do not have the effect of adjudicating the rights of the parties, or the persons, in whose favour the entries exist. Likewise, again recalling Annexure-6, wherein, notwithstanding the revenue entries being in the name of Chawali, Amar Singh was found to be entitled to decree against one of the respondents, being Sarbati, it cannot be said, that the suit against the two defendants, under Section 183 cannot be maintained.

The other aspect of the matter is, that all said and done, Chawali had adopted Amar Singh, who was none-else then the real younger brother of her deceased husband Mani Ram. At the same time, the new husband Kashi Ram, is again nobody else than the real elder brother of Amar Singh. The question of legal right, or title, stands on one foot, and the question of adverse possession, stands on other foot. I

recapitulate the closeness of the blood relationship, for the purpose of comprehending the aspect of adverse possession, so also, for the purpose of examining, as to whether the suit could be said to be barred by time. When Amar Singh was adopted by Chawali, from Devar Bhabhi, they became son and mother, and if they were living together, and enjoying the property, whether by getting cultivated it from Malla, or otherwise, it cannot be said, that anybody was ousted, or was claiming possession, adverse to the other. At the same time, since, at the time of remarriage by Chawali with Kashi Ram, again, Amar Singh was minor, obviously, since Kashi Ram was none else than the natural real elder brother of Amar Singh, it is well nigh possible, that though technically property divested from Chawali to Amar Singh, but then, in view of minority, and in view of her being adoptive mother, and Kashi Ram being his real elder brother, if the things went on to be continued as such, it cannot be said, that it did become a starting point of time, wherefrom possession did become, or could be claimed to have become, adverse to ownership. Even at the cost of repetition it may be observed, that on death of Mani Ram, the property did come to Chawali, obviously as an heir, as the inheritance could not remain in medio, and on the adoption of Amar Singh, the title devolving on Chawali did come to divested, but then thereby it cannot be said, that Amar Singh was supposed to physically dispossess Chawali, whether immediately, or within three years of his

attaining majority, notwithstanding there being nothing to show the existence of any hostility being there, towards Amar Singh, at the hands of anybody.

It cannot be assumed to be an all time pervasive principle of law, that every owner should be in actual physical possession of the property, inasmuch as, notwithstanding any-body-else, even if being in possession of the property, even though not with any hostile animus, still the owner may lose his title in the property.

In my view, in view of this, it cannot be said, that the possession of Chawali, for the period commencing from the date of adoption, till her executing sale deed in favour of Kashi Ram, is required to be considered to be adverse against Amar Singh. May be, that Amar Singh has come with a story of being forcibly dispossessed in 1977, but then execution of sale deed by Chawali in favour of Kashi Ram, did give the cause of action to Amar Singh, as that was an hostile act on the part of Chawali, which did bring about a threat to the title, and possession of Amar Singh, and since the present suit had been filed well within limitation, computed from that date, it cannot be said to be barred by time. Obviously may be, that Chawali might be a recorded Khatedar, but she did not have right, title or interest in the property, and when she sold the property to Kashi Ram, considered from any standpoint,

Kashi Ram's possession could not be described to be that of anything else than a trespasser, and therefore, the suit filed against him, within the period of 12 years, from the date of sale in his favour, could very well be maintained against him as trespasser, and was within limitation.

Then, I am constrained to observe, that the learned Board of Revenue had gone absolutely wrong, in holding, that Amar Singh would be entitled to half share, and half share would belong to Chawali.

Firstly, there is no pleading in this regard, and secondly, on the face of judgments Annexure-6 and 8, this could possibly not be held so. Since dismissal of the plaintiff's suit is also based on this ground, that since half share belonged to Chawali, she could very well execute the sale deed thereof, in favour of Kashi Ram. In my view this ground does require to be set aside, and dismissal of the suit, based on this ground also, cannot be sustained.

Now coming to the judgment in Laxmi Chand's case, on which much reliance is placed by the learned counsel for the respondent, it would suffice to say, that that judgment has no bearing whatever on the controversy involved in the present case. In that case, suit was filed under Section 180(1)(b), alleging the defendant to be in year to year tenancy, having been inducted by the plaintiff's adoptive

father, and after death of adoptive father, the plaintiff having called upon the defendant to deliver possession, and defendant having declined to so deliver; the question arose as to whether the suit could be maintained under Section 180 or 183, and, as to whether the suit was within time. The question of adoption of the plaintiff therein already stood concluded by the findings of the learned Courts below, and the principle propounded in Tiku Ram Vs. Board of Revenue, reported in 2003 R.R.D.-513, wherein it has been held, that if the defendant is proved to have been inducted as year to year tenant, and he continues to be in possession thereof, even in violation of Section 45 of the Rajasthan Tenancy, Act, **And** it is shown, that the defendant continued in possession, with consent of the plaintiff, express, or implied; then the recourse can be taken only to Section 180(1)(b), and if it is not so shown to have been continued in possession, then recourse available is, to Section 183 only, and accordingly the period of limitation is to be computed. Following this principle, it was found in that case, that the plaintiff had failed to establish the induction of the defendant as year to year tenant, so also about his having continued to remain in possession with express or implied consent of the plaintiff, and therefore, it was found, that the remedy available to the plaintiff was under Section 183, and then computing the period, since the defendant was in possession, claiming to be Khatedar, the suit, having been filed after more than 12

years, was held to be time barred. As against this, in the present case, there is no question of applicability of Section 180(1)(b), and then, if the transfer is effected by a person having no right, title, or interest, then the transferee obviously can be evicted under Section 183, and obviously, the period of limitation is computed from the date of transfer. In this suit, the possession of Chawali, since the death of Mani Ram, till sale to Kashi Ram, can not be computed against plaintiff, on the strength of the judgment in Laxmi Chand’s case, in view of the detailed findings, recorded above. Thus, in my view, Laxmi Chand's case does not help the cause of the respondents.

The net result of the aforesaid discussion is that the orders Annexure-9 and 11 cannot be sustained, and are hereby quashed.

Consequently, the writ petition is allowed. The impugned orders Annexure-9 and 11 are quashed, and the judgment Annexure-10 is restored. The plaintiff's suit is decreed accordingly. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/